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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,285	07/03/2003	James Ian Kinloch	CM-2681M	4038
27752	7590	09/28/2004	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			DELCOTTO, GREGORY R	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/613,285	Applicant(s) KINLOCH ET AL.	
	Examiner Gregory R. Del Cotto	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-13 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2-2004</u> . | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

1. Claims 1-13 are pending.

#### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, drawn to a detergent composition comprising a premix and method of making a premix, classified in class 510, subclass 503.
- II. Claims 12 and 13, drawn to a method of automatic dishwashing, classified in class 134, subclass 25.2.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the composition of Group I can be used in a materially different process such as in a method of cleaning textiles.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Kevin Waugh on September 20, 2004, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-111. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12 and 13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Note that, with respect to instant claim 7, this claim is vague and indefinite in that it is unclear how the powder part of the pouch can contain "a liquid capable of acting as

Art Unit: 1751

a binder for the powder composition" if the composition itself is a powder. Clarification is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 02/42408.

'408 teaches a water-soluble pouch suitable for use in machine dishwashing and which comprises a plurality of compartments in generally superposed or suppressible

Art Unit: 1751

relationship, each containing one or more detergent active or auxiliary components, and wherein the pouch has a volume of from about 5 to about 70 ml and a

longitudinal/transverse aspect ratio in the range from about 2:1 to about 1:8. The water-soluble pouch allows for optimum delivery of dishwashing detergent. See Abstract.

Suitable water-soluble pouches include dual-compartment pouches comprising loose powder, densified powder or tablet in a first compartment and a liquid, paste, or waxy or translucent gel detergent in a second compartment. See page 20, lines 1-25. The detergent and cleaning compositions can comprise traditional detergency components and can also comprise organic solvents having a cleaning function and organic solvents having a carrier or diluent function. Detergent components include bleaching agents, surfactants, alkalinity sources, etc. See page 24, lines 10-20. Suitable solvents include propylene glycol, diethylene glycol, dipropylene glycol, etc. See page 25, lines 1-20.

Suitable surfactants include C12-C20 amine oxides (preferably C14 and C16 hexadecyl dimethyl amine oxide), Poly-Tergent SLF-18, etc., and can be used in amounts from 0.2% to 30% by weight. Preferred surfactants for use are low foaming and include low cloud point nonionic surfactants and mixtures of higher foaming surfactants with low cloud point nonionic surfactants which act as a suds suppressor. See page 26, lines 1-20. Suitable low cloud point surfactants which act as suds suppressor include Poly-Tergent SLF-18. See page 28, lines 20-30.

Specifically, '408 teaches a two-compartment pouch in which one-side contains a particulate composition containing 60% by weight STPP, 1% HEDP, 1.5% Termanyl,

17% percarbonate, 11% carbonate, 7% silicate and the other side contains 55% dipropylene glycol, 20% C14AO, 20% SLF-18, and 0.4% dye.

Accordingly, the broad teachings of '408 anticipate the material limitations of the instant claims.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO02/42408.

'408 is relied upon as set forth above. However, '408 does not teach, with sufficient specificity, a detergent pouch in which one of the compartments contains a suds suppressor or other liquid capable as acting as a binder for the powder composition and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a detergent pouch in which one of the compartments contains a suds suppressor or other liquid capable as acting as a binder for the powder composition and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because '408 suggests a detergent pouch in which one of the compartments contains a suds suppressor or other liquid capable as acting as a binder for the powder composition and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al (US 5,164,121).



Smith et al teach a pourable amine oxide composition which is suitable for use in detergent compositions which is obtained by reacting a tert-amine with aqueous hydrogen peroxide in a normally liquid polyethylene glycol as the sole organic solvent. When the composition has a low water content, it is suitable for use in water-sensitive formulations, such as bar soaps and detergent concentrates. See Abstract. The amine oxide/ polyethylene glycol weight ratio is about 0.1-10/1 in the final reaction mixture. See column 2, lines 50-65. When the solution contains more water than is desired, it is removed from the reaction product by conventional means. The removal of the water may sometimes be accomplished by ordinary distillation. Vacuum stripping is a particularly preferred method of removing at least a portion of the water from the product. See claim 1 and column 3, lines 30-45.

Smith et al do not teach, with sufficient specificity, a process for making a surfactant premix comprising an amine oxide surfactant and a solvent in the specific ratio as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a surfactant premix comprising an amine oxide surfactant and a solvent in the specific ratio as recited by the instant claims, with a reasonable expectation of success, because the broad teaching of Smith et al suggest the formulation of a surfactant premix comprising an amine oxide surfactant and a solvent in the specific ratio as recited by the instant claims.

### ***Conclusion***


2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gregory R. Del Cotto

Application/Control Number: 10/613,285

Page 10

Art Unit: 1751

Primary Examiner  
Art Unit 1751

GRD

September 22, 2004